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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,979	03/23/2004	Daniel Lyvers	V003 1090.1	2269

7590 11/27/2006

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EXAMINER
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OMGBA, ESSAMA

ART UNIT	PAPER NUMBER
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3726

DATE MAILED: 11/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/806,979

Applicant(s)

LYVERS, DANIEL

Examiner

Essama Omgba

Art Unit

3726

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 7/16/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of Specie A, claims 1-11, in the reply filed on September 19, 2006 is acknowledged.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 1, 2, 3 and 9 recite the limitation "the ends" in lines 8, 2 and 6 respectively. There is insufficient antecedent basis for this limitation in the claims.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:  
  
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
6. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mogi et al. (JP 06174363) in view of Friesner (US Patent 3,478,138).

With regards to claim 1, Mogi et al. discloses a method of making a refrigerator storage assembly wherein a first shelf extrusion 9 having a bottom wall integrally formed with a side wall is formed, and a pair of end walls 10 are attached to the ends of the first shelf extrusion, each of the end walls engaging the bottom wall and the side wall of the first extrusion, and the storage assembly fixed to the refrigerator by cooperation of coupling projections and an engaging groove of the end walls, see abstract and figure 4. Although Mogi et al. does not disclose forming the first shelf extrusion by cutting to a predetermined length an indefinite length of extruded material, however it is known to form extruded members of a predetermined length by severing to length an indefinite length of extruded material as attested by Friesner, see column 1, lines 13-29. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have formed the first extrusion of Mogi et al. by extruding an indefinite length of material to form a first intermediate extrusion and cutting the first intermediate extrusion to a predetermined length to form the first shelf extrusion, in light of the teachings of Friesner, in order to economically manufacture the shelf extrusion. Applicant should note that it is inherent that the extrusion die used to form the shelf extrusion of Mogi et al. includes an aperture defining a first leg and a second leg since the shelf extrusion of Mogi et al. is I-shaped.

For claims 2 and 3, Applicant should note that, in as much as the structural elements of the storage assembly have not been positively recited, they have not been given any patentable weight in the method being claimed. Furthermore such wall section and cap are old and well known in the art.

For claim 4, Applicant should note that the pair of end walls of Mogi et al. are injection molded, see abstract.

For claims 5 and 6, the projection and groove coupling disclosed by Mogi et al. is structurally equivalent to the claimed fastening arrangement. Furthermore it is within the general knowledge of one of ordinary skill in the art to appropriately attach two members.

For claims 7 and 8, Applicant should note that it is conventional coat such shelf extrusion as claimed.

For claims 9-11, Applicant should note that the shelf extrusion of Mogi et al. could be cut to different lengths to provide storage assemblies of different sizes, see abstract.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Essama Omgba whose telephone number is (571) 272-4532. The examiner can normally be reached on M-F 9-6:30, 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bryant can be reached on (571) 272-4526. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Essama Omgba  
Primary Examiner  
Art Unit 3726

eo

November 15, 2006